

## **STATE OF CALIFORNIA**

### **DEPARTMENT OF INSURANCE**

**45 Fremont Street, 24th Floor**

**San Francisco, California 94105**

### **FINAL STATEMENT OF REASONS**

**Date: May 12, 2004 RH03028987**

### **REGULATIONS CONCERNING DISABILITY INSURANCE ASSESSMENT PURSUANT TO INSURANCE CODE SECTION 1872.85**

#### **UPDATE OF INITIAL STATEMENT OF REASONS**

Pursuant to Insurance Code Section 1872.85, Insurance Commissioner John Garamendi proposes to add to California Code of Regulations, Title 10, Chapter 5, Subchapter 9 the new article 8, entitled "Disability Insurance Assessment". Insurance Code Section 1872.85 permits the Commissioner to collect an annual fee of up to ten cents for each insured under an individual or group disability insurance policy. The purpose of the assessment is to fund increased investigation and prosecution of fraudulent claims made against these policies. The regulation also sets the date for the determination of the number of insureds affected by the assessment and the date for payment of the assessment.

Public comment was accepted and a public hearing was held on this proposed regulation on April 12, 2004. After considering the public comment during the initial 45 day period, initially the Commissioner decided to amend the proposed regulation to take into consideration pending legislation before the Legislature. After receiving additional public comment during the subsequent 15 day public comment period, the Commissioner decided to delete the new language because it became clear that the enabling statute, Insurance Code Section 1872.85, would not be amended prior to the promulgation of the proposed regulation. After a detailed review of the public comments, as indicated elsewhere in this rulemaking file, the Commissioner has determined that the regulation should be adopted in the same form as it was originally proposed to the public. Therefore, because the Initial Statement of Reasons still fully and accurately reflects the views of the Department of Insurance, the Commissioner incorporates by this reference the Initial Statement of Reasons.

#### **SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF FEBRUARY 26 THROUGH APRIL 12, 2004 AND THE 15 DAY NOTICE PERIOD CONCERNING PROPOSED CHANGES FROM APRIL 16, 2004 THROUGH MAY 3, 2004**

*Summary and Response to Comments Re: Section 2698.95*

#### **Comment No. 1:**

**Commentator:** Anne Eowan, Association of California Life and Health Insurance Companies

**Date of Comment:** March 22, 2004

**Type of Comment:** Written

<b>Summary of Comment:</b>	<b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulation in response to the comment.
<b>(a) Clarification of Purpose of Disability Insurance Assessment</b>  The commentator requests that the Commissioner change the proposed regulation to clarify what the Disability Insurance Assessment funds will be used for. The commentator's grounds are that the regulation as previously written did not specify what the funds would be used for.	<b>(a) Clarification of Purpose of Disability Insurance Assessment</b>  After considering the comment, the Commissioner has not accepted the proposed language change to the proposed regulation. The proposed change offered by the commentator cannot be effected until the Legislature amends the enabling statute, Insurance Code section 1872.85.

**Comment No. 2:**

**Commentator:** Douglas A. Lutgen, CSAA Inter-Insurance Bureau

**Date of Comment:** April 12, 2004

**Type of Comment:** Written

<b>Summary of Comment:</b>	<b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response to the comment.
<b>(a) The Proposed Regulation Improperly Separates Disability Insurers from Other Entities Liable for Any Loss Due to Health Insurance Fraud</b>  The commentator asserts that the proposed regulation improperly separates disability insurers from other entities liable for any loss due to health insurance fraud. In particular, the commentator asserts that the proposed regulation would create a situation where a subset of disability insurers who do not write health insurance would be assessed to fund the increased investigation and prosecution of fraudulent health insurance claims.	<b>(a) The Proposed Regulation Improperly Separates Disability Insurers from Other Entities Liable for Any Loss Due to Health Insurance Fraud</b>  After considering the comment, the Commissioner has decided to retain the language contained in the proposed regulation because the language follows the language of the enabling statute, Insurance Code section 1872.85

<p><b>(b) The Proposed Regulation Improperly Applies an Assessment Against Travel-Related Accident Policies Because Such Policies Do Not Meet the Definition of Health Insurance and Thus Do Not Fall Within the Scope of Insurance Code Section 1872.85</b></p> <p>The commentator asserts that proposed regulation improperly makes an assessment against travel-related accident policies. In addition, such policies do not meet the definition of health insurance contained in Insurance Code section 106.</p>	<p><b>(b) The Proposed Regulation Improperly Applies an Assessment Against Travel-Related Accident Policies Because Such Policies Do Not Meet the Definition of Health Insurance and Thus Do Not Fall Within the Scope of Insurance Code Section 1872.85</b></p> <p>After considering the comment, the Commissioner has decided to retain the original language of the proposed regulation. It is the Commissioner's position that Insurance Code section 1872.85 permits an assessment to be made against all disability insurers. Since Insurance Code section 1872.85 was enacted in 1991, the definition of health insurance contained in Insurance Code section 106(b) does not apply.</p>
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**Comment No. 3:**

**Commentator:** Eugene R. Anderson, Anderson Kill & Olick, P.C.

**Date of Comment:** April 12, 2004

**Type of Comment:** Written

<p><b>Summary of Comment:</b></p>	<p><b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response to the comment.</p>
<p><b>(a) The Proposed Regulation Improperly Applies an Assessment Against Travel-Related Accident Policies Because Such Policies Do Not Meet the Definition of Health Insurance and Thus Do Not Fall Within the Scope of Insurance Code Section 1872.85</b></p> <p>The commentator asserts that the proposed regulation will benefit one company, UnumProvident, by favoring insurers over policyholders.</p>	<p><b>(a) The Proposed Regulation Improperly Applies an Assessment Against Travel-Related Accident Policies Because Such Policies Do Not Meet the Definition of Health Insurance and Thus Do Not Fall Within the Scope of Insurance Code Section 1872.85</b></p> <p>After considering this comment, the Commissioner has elected not to change the language of the proposed regulation. There is no evidence that the assessment created by this proposed regulation will benefit any one party more than anyone else. In addition, the</p>

	assessment proceeds will fund investigations which will not be limited to just policyholders suspected of making a fraudulent claim. Other parties, such as medical providers, may be investigated as well.
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**Comment No. 4:**

**Commentator:** Douglas A. Lutgen, CSAA Inter-Insurance Bureau

**Date of Comment:** May 3, 2004

**Type of Comment:** Written (email)

<b>Summary of Comment:</b>	<b>Response to Comment:</b> The Commissioner has considered the comment and has changed the proposed regulations in response to the comment.
<p><b>(a) The New Language in the Proposed Regulation that Resulted from a Previous Public Comment is Not Supported by the Enabling Statute</b></p> <p>The commentator asserts that the addition of the language “for the purposes of the prosecution and investigation of disability insurance fraud pursuant to Insurance Code section 1872.85” is not supported by the enabling statute, Insurance Code section 1872.85.</p>	<p><b>(a) The New Language in the Proposed Regulation that Resulted from a Previous Public Comment is Not Supported by the Enabling Statute</b></p> <p>After considering this comment, the Commissioner has decided to delete the new language in the proposed regulation. While the new language was added in anticipation of the Legislature amending Insurance Code section 1872.85, the bill proposing the amendment is still pending before the Legislature.</p>